



# Legal Update

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November 2015

**The Appeals Court holds that parental privilege can extend to stepparents acting in “loco parentis.”**

***Commonwealth v. Christine Packer***, 88 Mass. App. Ct. 585 (2015):

**Background:** The defendant, Christine Packer was married to the victim’s father. The victim’s biological mother was never married to her father and there was no evidence that she was involved in her life. The victim considered the defendant her mother and referred to her as “mom,” even though they had had volatile relationship. On March 30, 2011, the defendant struck the victim’s right ear with her hand after she learned that victim had eaten some cheese from the refrigerator. The defendant relayed the incident to the victim’s father, who punched the victim in the face.

Later that day, the victim reported the incident to her ninth grade adjustment counselor at a regularly scheduled meeting. The counselor did not notice any physical marks on the victim when she first arrived. However, after the victim reported the incident, the counselor carefully examined the victim’s head and was able to observe a swollen lip and cut gum (in the area where the father allegedly “punched” her), and a “red like scratch mark” on the victim’s right ear (where the defendant allegedly struck her). An investigation and these charges ensued.

The defendant and the victim’s father were charged with assault and battery of the fourteen year-old victim. There was a joint trial, during which both parties requested a jury instruction on the affirmative defense of parental discipline. The judge gave the instruction with

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regards to the father, but not with regards to the defendant because the trial judge found the defendant had not sufficiently demonstrated that she was acting in “loco parentis.”

The father was acquitted and the defendant was convicted. The defendant appealed and argued that the parental privilege should extend to her because she was acting in “loco parentis.”

**Conclusion:** The Appeals Court held that the parental privilege established in *Commonwealth v. Dorvil*, 472 Mass. 1 (2015), can be applied to a person acting in “loco parentis.”

Previously, the SJC held in *Dorvil* that parents can use reasonable force to discipline a minor child under the common-law parental privilege. The SJC did establish some parameters surrounding the parental privilege:

- (1) the force used against the minor child is reasonable;
- (2) the force is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor's misconduct; and
- (3) the force used neither causes, nor creates a substantial risk of causing, physical harm (beyond fleeting pain or minor, transient marks), gross degradation, or severe mental distress.”

In the present case, the Appeals Court considered the defendant’s relationship with the victim and whether she was acting in “loco parentis” even though the victim’s biological father lived in the same house. According to the victim’s testimony, the defendant served “a robust role in the family” and she considered the defendant her mom. There was no evidence that the victim’s biological mother was involved in her life at all. Based on the facts in this case, the Court found there was sufficient evidence to establish that the defendant was acting in “loco parentis,” and should have been allowed to use the parental privilege as an affirmative defense.

The Court also did not adopt a general presumption that stepparents act in loco parentis with regard to their spouses' children. “The mere fact that one is married to a legal parent obviously may say little about the nature and extent of the particular parenting role that he or she plays, and that role presumably will vary from household to household.” See *Commonwealth v. O'Connor*, 407 Mass. at 668 (“an in loco parentis relationship does not arise merely because someone in a position of stepparent has taken a child into his or her home and cares for the child”). Additionally, the Court also did not preclude stepparents from playing a “loco parentis” role just because one of the children's legal parents also resides in the same household.

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